

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

STANLEY EUGENE PERMENTER,)

Plaintiff,)

v.)

ERIC EVANS, Lt., et.al.,)

Defendants.)

Case No. 7:03-cv-03431-LSC-HGD

MEMORANDUM OPINION

The magistrate judge filed a Report and Recommendation on April 28, 2006, recommending that defendants' motions for summary judgment be granted as to (1) plaintiff's claims for monetary relief against all defendants in their official capacity and (2) plaintiff's claim of due process violation against defendant Carter, and that those claims be dismissed. It was further recommended that defendants' motions for summary judgment be denied as to (1) plaintiff's Eighth Amendment failure to protect claims against defendants Chapman, Lewis, Felder, and Davis; (2) plaintiff's Eighth Amendment excessive force claim against defendant Evans; and (3) plaintiff's state law claims for harassment and excessive force against defendant Evans. Plaintiff's request for injunctive relief was found to be moot, and his claim regarding deprivation of personal property was dismissed without prejudice. The

parties were allowed fifteen (15) days in which to file written objections to the magistrate judge's recommendations. No objections have been filed by any party.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the Report and Recommendation, the Court is of the opinion that the magistrate judge's report is due to be and is hereby ADOPTED and the magistrate judge's recommendation is ACCEPTED as follows:

1. The Court EXPRESSLY FINDS that there are no genuine issues of material fact with regard to plaintiff's claims for monetary relief against defendants in their official capacities and against defendant Carter for violation of plaintiff's right to due process and defendants are entitled to judgment as a matter of law. Defendants' motions for summary judgment are therefore due to be and the same are hereby GRANTED and these claims are DISMISSED WITH PREJUDICE.

2. The Court EXPRESSLY FINDS that there are genuine issues of material fact with regard to plaintiff's Eighth Amendment failure to protect claims against defendants Chapman, Lewis, Felder, and Davis, in their individual capacities. Defendants' motion for summary judgment is DENIED.

3. The Court EXPRESSLY FINDS that there are genuine issues of material fact with regard to plaintiff's Eighth Amendment excessive force and state law

harassment and assault and battery claims against defendant Evans, in his individual capacity. As such, defendant Evans' motion for summary judgment is DENIED.

Defendants Evans, Chapman, Lewis, Felder, and Davis are hereby ORDERED to file an answer within twenty (20) days of the entry date of this Order.

Done this 6th day of June 2006.



L. SCOTT COOGLER
UNITED STATES DISTRICT JUDGE
124153